



March 3, 2019

TO: Republican Members

FROM: Republican Committee Staff

RE: Hearing entitled “Strengthening Our Health Care System: Legislation to Lower Consumer Costs and Expand Access”

I. INTRODUCTION

The Subcommittee on Health will hold a hearing on Wednesday, March 6, 2019, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Strengthening Our Health Care System: Legislation to Lower Consumer Costs and Expand Access.”

II. REPUBLICAN WITNESS

- J.P. Wieske, Vice President, State Affairs, Council for Affordable Health Coverage (CAHC).

III. BACKGROUND

President Donald J. Trump has taken several administrative actions to enhance state innovation waivers and approve all seven active state reinsurance programs.¹ The Administration has also taken steps to increase patient choice more efficiently utilize tax resources. The Council of Economic Advisors recently projected these deregulatory reforms to expand consumer options will generate \$450 billion in benefits to Americans over the next decade.²

The Democrats noticed three bills for this legislative hearing:

- [H.R. 1425](#), State Health Care Premium Reduction Act, authored by Reps. Angie Craig (D-MN) and Scott Peters (D-CA);
- [H.R. 1386](#), Expanding Navigators’ Resources for Outreach, Learning, and Longevity Act of 2019, or the ENROLL Act of 2019, authored by Rep. Kathy Castor (D-FL); and,

¹ Center for Consumer Information and Insurance Oversight. “Section 1332: State Innovation Waivers.” https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-.html#Section%201332%20State%20Application%20Waiver%20Applications.

² The Council of Economic Advisors. “Deregulating Health Insurance Markets: Value to Market Participants.” February 2019. <https://www.whitehouse.gov/wp-content/uploads/2019/02/Deregulating-Health-Insurance-Markets-FINAL.pdf>.

- [H.R. 1385](#), State Allowance for a Variety of Exchanges Act, or the SAVE Act, authored by U.S. Reps. Andy Kim (D-NJ) and Brian Fitzpatrick (R-PA).

Reinsurance

The Patient Protection and Affordable Care Act (PPACA) established the transitional reinsurance program to provide payment adjustments to health insurance issuers for high-risk individuals for a period of three years, ending in 2016.³ The temporary program collected contributions from non-group and group health plans, but made payments to only non-group market health plans with high-risk individuals. The Health and Human Services (HHS) Secretary implemented the parameters of the program, including the formula for contribution collections and reinsurance payments.

Section 1332 of PPACA established Waivers for State Innovation beginning January 1, 2017.⁴ These waivers give the HHS Secretary and the Secretary of the Treasury the discretion to grant states new flexibility within their health care markets if the model provides coverage that is as comprehensive, affordable, covers a comparable number of residents, and is budget neutral to the federal government. If approved, the state may receive funding equal to the amount of forgone federal financial assistance that would have been provided to its residents pursuant to specified PPACA programs, known as pass-through funding. An approved waiver can remain in place for five years and can be renewed. To date, eight states have active waivers, seven of which are approved for state reinsurance programs and all of which are budget neutral to the federal government.⁵ Among these states, for 2018 alone: Alaska experienced a 26 percent premium reduction, Minnesota saw their rate increase reduced to 11.3 percent, significantly less than their 2017 57 percent increase; and, Oregon rate changes ranged from 1.6 to 14.8 percent, dropping to a range of -9.6 to 10.1 percent for 2019.⁶

In an effort to improve state innovation, the Trump Administration issued revised guidance⁷ and model waivers for expedited review and approval, a concept previously used for state reimbursement during the Medicare Part D transition⁸ and for assistance to Hurricane Katrina evacuees enrolled in Medicaid.⁹ The updated guidance focused on loosening restrictions limiting state flexibility and consumer choice, and providing flexibility for states to meet the legislative authority standard. More specifically, the modernized guidance centers on the

³ P.L. 111-148, as amended by P.L. 111-152.

⁴ P.L. 111-148, as amended by P.L. 111-152.

⁵ Center for Consumer Information and Insurance Oversight. "Section 1332: State Innovation Waivers."

https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-.html#Section%201332%20State%20Application%20Waiver%20Applications.

⁶ Jack O'Brien. Health Leaders. "ACA Reinsurance Waivers Provide Relief from Premium Hikes." November 27, 2018. <https://www.healthleadersmedia.com/finance/aca-reinsurance-waivers-provide-relief-premium-hikes>.

⁷ 31 CFR Part 33, 45 CFR Part 155.

⁸ Centers for Medicare and Medicaid Services. "State Reimbursement for Medicare Part D Transition." January 24, 2006. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2006-Fact-sheets-items/2006-01-24.html>.

⁹ Centers for Medicare and Medicaid Services. "Disaster Relief for Hurricane Katrina Evacuees in Texas." September 15, 2005. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2005-Fact-sheets-items/2005-09-15.html>.

availability of comprehensive and affordable coverage, expands the definition of coverage to include short-term plans, and clarifies that existing state legislation providing statutory authority to enforce PPACA may satisfy the requirement that each state enact a law to apply for and receive a 1332 waiver.

Congress has also taken recent steps to provide states with reinsurance opportunities. In the 115th Congress, the House-passed H.R. 1628, the American Health Care Act of 2017, included the Patient and State Stability Fund.¹⁰ This provision would have provided states with the flexibility and resources to cut out-of-pocket costs like premiums and deductibles, promote access to health care services, and repair insurance markets. For states that chose not to access the available funding, the federal government would have established and implemented a reinsurance program. In addition to reinsurance, the Patient and State Stability Fund's uses of funds included: helping high-risk individuals enroll in health insurance coverage; promoting participation in the individual market and small group market; and providing assistance to reduce out-of-pocket costs, such as copayments, coinsurance, premiums, and deductibles. The fund included a modestly phased-in state match as well as a state allocation formula based on each state's previously incurred claims. The Patient and State Stability Fund was fully paid for and included language affirming the long-standing consensus that federal dollars should not pay for abortion services.

H.R. 1425, the State Health Care Premium Reduction Act, authored by Reps. Angie Craig (D-MN) and Scott Peters (D-CA) provides \$100 billion over 10 years for states to establish reinsurance programs, strictly for individuals enrolled in PPACA's qualified health plans (QHPs). The bill is not paid for, nor does it contain a state match or state allocation formula, delegating the latter to the HHS Secretary like the transitional reinsurance program did. Finally, the bill does not include language affirming the long-standing consensus that federal dollars should not pay for abortion services.

Navigators Program, Outreach and Education

PPACA established the Navigator program and enrollment education to provide guidance to enrollees, inform consumers of Open Enrollment Periods, and notify potential enrollees about ways to sign up for coverage.¹¹ On August 31, 2017, the Center for Consumer Information and Insurance Oversight (CCIIO) announced changes to both programs.¹²

For plan year 2017, Navigators received a total of \$62.5 million in grants and enrolled 81,426 individuals,¹³ which accounted for fewer than one percent of total enrollees. According to this same report, 17 Navigators enrolled less than 100 people, costing taxpayers \$5,000 per

¹⁰ H.R. 1628, 115th Congress. 2017.

¹¹ P.L. 111-148, as amended by P.L. 111-152.

¹² Center for Consumer Information and Insurance Oversight. "Policies Related to the Navigator Program and Enrollment Education for the Upcoming Enrollment Period." August 31, 2017. <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Policies-Related-Navigator-Program-Enrollment-Education-8-31-2017pdf.pdf>.

¹³ Centers for Medicare and Medicaid Services. "CMS Announcement on ACA Navigator Program and Promotion for Upcoming Open Enrollment." August 31, 2017. <https://www.cms.gov/newsroom/press-releases/cms-announcement-aca-navigator-program-and-promotion-upcoming-open-enrollment>.

enrollee. Meanwhile, according to the Centers for Medicare and Medicaid Services (CMS), “By contrast, agents and brokers assisted with 42 percent of [Federally Facilitated Exchange (FFE)] enrollment for plan year 2018, which cost the FFE only \$2.40 per enrollee to provide training and technical assistance.”¹⁴ For this reason, Navigator grantees received funding for plan year 2018 based on their ability to reach enrollment goals for the previous year.

CMS allocated \$10 million to outreach and education for plan year 2018, consistent with promotional spending levels on Medicare Advantage and Medicare Part D. While CMS devoted more than \$100 million to outreach and education for plan year 2017, or roughly twice as much as for plan year 2015, first-time enrollment numbers declined by 42 percent.¹⁵

According to CMS, for plan year 2019, the Trump Administration “...sent over 700 million reminder emails and text messages to consumers, as well as 3.2 million outreach emails to help Navigators, agents, and brokers assist consumers.”¹⁶

H.R. 1386, the Expanding Navigators’ Resources for Outreach, Learning, and Longevity Act of 2019, or the ENROLL Act of 2019, is authored by Rep. Kathy Castor (D-FL). This legislation proposes redirecting \$100 million annually from the exchange user fee program to the Navigator program. CMS recently proposed reducing the Federally-facilitated marketplace (FFM) exchange user fee from 3.5 to 3.0 percent, prior to the introduction of H.R. 1386.¹⁷

State-Based Marketplaces

PPACA provided states with the option of building their own State-based Marketplace (SBM) or utilizing the FFM.¹⁸ An unlimited authorization and appropriation was made available to states in the form of grants for the planning and establishment of SBMs. No funding was awarded after December 31, 2014, in accordance with the law. In 2018, 11 states and the District of Columbia operated SBMs.¹⁹ This same year, five states operated on a State-based Marketplace-Federal Platform (SBM-FP) while six states operated on a State-Partnership

¹⁴ Centers for Medicare and Medicaid Services. “CMS Announces New Funding Opportunity Announcement for the Federally-Facilitated Exchange Navigator Program.” July 10, 2018. <https://www.cms.gov/newsroom/press-releases/cms-announces-new-funding-opportunity-announcement-federally-facilitated-exchange-navigator-program>.

¹⁵ Centers for Medicare and Medicaid Services. “CMS Announcement on ACA Navigator Program and Promotion for Upcoming Open Enrollment.” August 31, 2017. <https://www.cms.gov/newsroom/press-releases/cms-announcement-aca-navigator-program-and-promotion-upcoming-open-enrollment>.

¹⁶ Centers for Medicare and Medicaid Services. “CMS Releases Final Snapshot for the 2019 Federal Exchange Open Enrollment Period.” January 3, 2019. <https://www.cms.gov/newsroom/press-releases/cms-releases-final-snapshot-2019-federal-exchange-open-enrollment-period>.

¹⁷ Centers for Medicare and Medicaid Services. “Proposed rule. Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020. January 17, 2019. <https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-00077.pdf>.

¹⁸ P.L. 111-148, as amended by P.L. 111-152.

¹⁹ Henry J. Kaiser Family Foundation. “State Health Insurance Marketplace Types, 2018.” Retrieved on March 3, 2019, from: <https://www.kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/?activeTab=map¤tTimeframe=0&selectedDistributions=marketplace-type&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

Marketplace (SPM).²⁰ According to the Congressional Research Service (CRS), 17 states were awarded roughly \$4.5 billion in grants to plan and establish grants.²¹

The Committee on Energy and Commerce issued a Majority Staff report entitled, “Implementing Obamacare: A Review of CMS’ Management of the State-Based Exchanges,” on September 13, 2016.²² Among the report’s key findings in 2016:

- CMS is not confident that the remaining SBEs will be sustainable in the long term.
- As of September 2016, every SBE still relies upon federal establishment grant funds – 20 months after SBEs were to be self-sustaining by law.
- CMS eased the transition for failed SBEs to join HealthCare.gov by allowing them to keep user fees collected by insurance carriers intended to pay for the use of HealthCare.gov.

H.R. 1385, State Allowance for a Variety of Exchanges Act, or the SAVE Act, is authored by U.S. Reps. Andy Kim (D-NJ) and Brian Fitzpatrick (R-PA). This legislation provides \$200 million for states to establish SBMs. The bill is not paid for.

IV. REPUBLICAN STAFF CONTACTS

If you have any questions regarding this hearing, please contact Adam Buckalew of the Republican Committee staff at (202) 225-3461.

²⁰ Henry J. Kaiser Family Foundation. “State Health Insurance Marketplace Types, 2018.” Retrieved on March 3, 2019, from: <https://www.kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/?activeTab=map¤tTimeframe=0&selectedDistributions=marketplace-type&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

²¹ Congressional Research Service. “Overview of Health Insurance Exchanges.” June 20, 2018. https://www.crs.gov/Reports/R44065#_Toc524344378.

²² Committee on Energy and Commerce. “Implementing Obamacare: A Review of CMS’ Management of the State-Based Exchanges.” September 13, 2016. https://archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/114/analysis/20160916Review_of_CMS_Management_of_the_State_Based_Exchanges_0.pdf